

Notice of Allowability

Application No.

09/887,469

Examiner

Stacy B Chen

Applicant(s)

KREMPL ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to November 2, 2005.
2. ☒ The allowed claim(s) is/are 1-52, 54, 55, 57, 58, 60-62, 64-66, 96-112, 198 and 199.
3. ☒ The drawings filed on 01 March 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Examiner's Comments

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 23, 2004 was received, however, due to claim misnumbering, the amendment was not entered. The examiner requested Applicant to file an amendment with correct numbering, which was filed November 2, 2005, and is acknowledged and entered.
2. Claims 1-52, 54, 55, 57, 58, 60-62, 64-66, 96-112 and 198-199 are pending. Claims 1-52, 54, 55, 57, 58, 60-62, 64-66, 96-99 and 109-112 are under examination. Claims 100-108 and 198-199 are rejoined in view of the allowable subject matter of the elected claims.
3. The statements in the amendment filed September 23, 2004 regarding the deposited materials are acknowledged.

Reasons for Allowance

4. Applicant's petition to accept a delayed priority claim was granted by the Office of Petitions, and Applicant's amendment to the specification with regard to priority is acknowledged and entered. In view of the perfected priority claim, the rejection of claims 1-67, 96-99 and 109-112 under 35 U.S.C. 103(a) as obvious over Collins (6,264,957) in view of Ball *et al.* (*J. Virol.* 1999, 73:4705-4712) is withdrawn because Collins is not eligible prior art.
5. The provisional rejection of claims 1, 2, 8 and 12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-10 of U.S. Patent No.

Art Unit: 1648

6,713,066 in view of Collins (US Patent 6,264,957) is withdrawn in view of Applicant's perfected priority claim which disqualifies the use of the Collins patent as prior art.

6. Claim 1 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 9 of copending application USSN 09/602,212. The Office acknowledges Applicant's request to redirect double patenting issues to the copending application which has not been deemed to be in condition for allowance. In view of the fact that no other rejections are pending in this application, the provisional rejection is withdrawn.

7. Claims 100-108 and 198-199 are rejoined in view of the allowable subject matter of the elected claims. Claims 100-108 and 198-199 are drawn to methods of making and using the patentable subject matter of the elected claims. Therefore, the claimed methods are allowable over the prior art of record.

Conclusion

8. Claims 1-52, 54, 55, 57, 58, 60-62, 64-66, 96-112 and 198-199 are allowable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The

Art Unit: 1648

examiner can normally be reached on M-F (7:00-4:30). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James C. Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

SB

Stacy B. Chen
November 5, 2004

James C. Housel
JAMES HOUSEL 11/15/04
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600